Supreme Court, U.S.
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No. _____

In The

Supreme Court of the United States

October Term, 1995

PETER E. HALL,

Petitioner,

versus

RAFAEL BENET MELENDEZ,

Respondent.

Petition For Writ Of Certiorari To The Supreme Court Of Puerto Rico

PETITION FOR WRIT OF CERTIORARI

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24 pp

QUESTION PRESENTED

Whether an award of attorney's fees to the respondent by judgment of the trial court in the present case was erroneous, when the judgment failed to make reference to any statute authorizing such award or any explication of the reason for such award.

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STATUTE:

Puerto Rico Rules of Civil Procedure of 1979, Rule 44.1(d), 32 L.P.R.A. App. III, R. 44.1(d) 1, 3, 6

JURISDICTION

The order sought to be reviewed was entered by the Supreme Court of Puerto Rico on July 1, 1996.

The jurisdiction of this Honorable Court to review the present case is invoked under 28 U.S.C. § 1258. The petitioner respectfully submits that the order sought to be reviewed is a "final judgment or decree" within the meaning of 28 U.S.C. § 1258, for the reason that all available procedures for appellate review in the courts below of the question presented before this Honorable Court have been exhausted.

STATUTE INVOLVED

The statute involved in the present case is set forth below:

"Attorney's fees. In the event that any party or its lawyer has acted obstinately or frivolously, the court shall, in its judgment, impose on such person the payment of a sum for attorney's fees which the court decides corresponds to such conduct." Puerto Rico Rules of Civil Procedure of 1979, Rule 44.1(d), 32 L.P.R.A. App. III, R. 44.1(d).

STATEMENT OF FACTS

The complaint dated July 28, 1992, in the present case was served on the petitioner (defendant below) on December 4, 1992. It stated a claim for unpaid rent under a rental contract subscribed May 9, 1990, for use of a

property by the petitioner as a law office. The complaint also claimed payment of $250.00 for costs and expenses and of $500.00 for attorney's fees.

After a pretrial conference held on June 1, 1993, the trial on the merits of the action was held in the District Court of Puerto Rico, San Juan Part, on February 9, 1994. At trial the petitioner submitted documentary evidence and his own testimony tending to show that the respondent (plaintiff below) had breached the reasonable expectations of the parties at the formation of the rental contract. The judgment of the trial court (Appendix to Petition, App. 1), decided March 30, 1994, and notified to the parties on July 13, 1994*, awarded to the respondent the amount of unpaid rent claimed, costs and expenses, and the amount of $1,000.00 for attorney's fees. The latter judgment failed to make reference to any statute authorizing the award of attorney's fees or any explication of the reason for such award.

The petitioner filed on August 8, 1994, in the Superior Court of Puerto Rico, San Juan Part, an appeal to seek review of the judgment of the trial court, which appeal was subsequently transferred to the newly created Circuit Court of Appeals of Puerto Rico, San Juan Regional Circuit. The latter appellate court rendered judgment

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* The trial court stayed judgment until notification on June 6, 1994, of the decision of the Supreme Court of the United States on the petition for writ of certiorari in *Hall v. Benet*, No. 93-1763, *cert. denied*, ___ U.S. ___, 128 L.Ed.2d 888, 114 S.Ct. 2166 (1994), which raised the issue of the constitutionality of the prejudgment attachment in the present case of the petitioner's motor vehicle.

(Appendix to Petition, App. 7), notified to the parties on April 1, 1996, affirming in all respects the appealed judgment. The judgment of the appellate court raised for the first time in the present proceedings the relevance of Rule 44.1(d) of the Puerto Rico Rules of Civil Procedure of 1979, 32 L.P.R.A. App. III, R. 44.1(d), which authorizes the award of attorney's fees to a prevailing litigant in the event of a finding by the trial court of the occurrence of obstinacy of the losing party.

The petitioner filed on May 31, 1996, in the Supreme Court of Puerto Rico a petition of certiorari to challenge with respect to the award of attorney's fees the judgment of the Circuit Court of Appeals affirming the judgment of the trial court. The petitioner alleged before the Supreme Court of Puerto Rico, first, that said Rule 44.1(d) violates the right to due process, because it fails to provide clear and precise guidance to the trial court for an award of attorney's fees, and second, that in any event the trial court in the present proceedings failed to comply with the procedural requirements for an award of attorney's fees, since the judgment of the trial court failed to make reference to Rule 44.1(d) or any explication of the reason for the award. The Supreme Court of Puerto Rico denied the petition of certiorari by order (Appendix to Petition, App. 12) dated June 28, 1996, and entered July 1, 1996.

The present petition for writ of certiorari seeks review in the Supreme Court of the United States of the latter order of the Supreme Court of Puerto Rico.

ARGUMENT

The petitioner's argument in the present case begins with a critical examination of the proceedings and judgment in the trial court. It is noteworthy that attorney's fees were first requested in the complaint served on December 4, 1992. In the respondent's version of the facts, the petitioner was allegedly obstinate before making any appearance at all. The proceedings before the trial court consisted as they were of a pretrial conference held on June 1, 1993, and of a brief trial on the merits held on the morning of February 9, 1994. In the trial court's version of the facts, the petitioner was obstinate, merely because he defended against the allegations by submitting evidence tending to show that the respondent had breached the rental contract. In other words, the petitioner was charged for attorney's fees for failure to accede without question to the claims of the complaint. The petitioner respectfully submits that the implied conclusion of the occurrence of obstinacy bore no relation to the actual conduct of the petitioner before the court.

While the traditional American Rule on attorney's fees holds that "one should not be penalized for merely defending or prosecuting a lawsuit" (*Summit Valley Industries, Inc. v. Local 112, United Brotherhood of Carpenters and Joiners of America*, 456 U.S. 717, 724, 72 L.Ed.2d 511, 517, 102 S.Ct. 2112, 2116 (1982)), the American Rule makes even more sense when, as in the present case, the supposedly obstinate party is *defending* against a lawsuit. Any penalty such as an award of attorney's fees that seeks to dissuade a defendant from presenting an orderly defense against the allegations of a complaint is an egregious violation of the right to due process. See as

well on the American Rule *Fogerty v. Fantasy, Inc.*, 510 U.S. ___, 127 L.Ed.2d 455, 114 S.Ct. 1023 (1994); *Chambers v. NASCO, Inc.*, 501 U.S. 32, 115 L.Ed.2d 27, 111 S.Ct. 2123 (1991); *Roadway Express, Inc. v. Piper*, 447 U.S. 752, 65 L.Ed.2d 488, 100 S.Ct. 2455 (1980); *Runyon v. McCrary*, 427 U.S. 160, 49 L.Ed.2d 415, 96 S.Ct. 2586 (1976); *Alyeska Pipeline Service Co. v. Wilderness Society*, 421 U.S. 240, 44 L.Ed.2d 141, 95 S.Ct. 1612 (1975); *F. D. Rich Co., Inc. v. United States ex rel. Industrial Lumber Co., Inc.*, 417 U.S. 116, 40 L.Ed.2d 703, 94 S.Ct. 2157 (1974); *Hall v. Cole*, 412 U.S. 1, 36 L.Ed.2d 702, 93 S.Ct. 1943 (1973); *Mills v. Electric Auto-Lite Co.*, 396 U.S. 375, 24 L.Ed.2d 593, 90 S.Ct. 616 (1970); *Fleischmann Distilling Corp. v. Maier Brewing Co.*, 386 U.S. 714, 18 L.Ed.2d 475, 87 S.Ct. 1404 (1967).

Although the award of attorney's fees in the present case is certainly greater than nominal in amount, the judgment of the trial court (Appendix to Petition, App. 1), notified on July 13, 1994, failed to make reference to any statute authorizing the award of attorney's fees, or even for that matter, any explication of the reason for the award. The failure of the trial court to make a specific finding of obstinacy contravenes the procedural requirements for an award of attorney's fees under both federal and Puerto Rico precedents. See for instance *Roadway Express, Inc. v. Piper, supra*, as well as the recent opinion of the Supreme Court of Puerto Rico in *Arrieta Barbosa v. Chinea vda. de Arrieta*, 95 J.T.S. 157 (1995). Moreover, the precedents prohibit an award of attorney's fees as an automatic result of an adverse judgment. See for instance *Runyon v. McCrary, supra*, as well as the opinion of the Supreme Court of Puerto Rico in *Raoca Plumbing & Sprinker Corporation v. Trans World Assurance Co.*, 114

D.P.R. 464 (1983). While the judgment of the Circuit Court of Appeals (Appendix to Petition, App. 7), notified on April 1, 1996, raised for the first time the relevance of Rule 44.1(d) of the Puerto Rico Rules of Civil Procedure of 1979, 32 L.P.R.A. App. III, R. 44.1(d), the latter reference ought not be considered to cure the deficiency of the judgment of the trial court, since the requirement of a specific finding of obstinacy is imposed explicitly on the trial court.

Rule 44.1(d) implements a punishment rationale with the only purpose of discouraging avoidable or unnecessary litigation. *Corpak, Inc. v. Ramallo Brothers Printing, Inc.*, 125 D.P.R. 724 (1990); *Fernandez v. San Juan Cement Co., Inc.*, 118 D.P.R. 713 (1987). Nevertheless, several recent opinions interpreting Rule 44.1(d), e.g., *Corpak, supra*, have disallowed or reduced the awards of attorney's fees made by the trial court, and the *Corpak* opinion took notice of the American Rule, citing in particular to *Alyeska Pipeline Service Co., supra*. The petitioner respectfully submits that Puerto Rico courts are moving away from reliance on a strict interpretation of Rule 44.1(d) to a position more closely resembling the traditional American Rule. As shown in the petitioner's argument, the American Rule permits an award of attorney's fees only in exceptional circumstances, and the norm is to require litigants to bear their own attorney's fees.

CONCLUSION

For the reasons set forth in the present petition for writ of certiorari, the petitioner respectfully requests of this Honorable Court the issuance of the writ of certiorari to review the order of the Supreme Court of Puerto Rico in the present case entered on July 1, 1996.

Respectfully submitted,

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APPENDIX

Copies of the judgment dated March 30, 1994, of the District Court of Puerto Rico, San Juan Part; of the judgment dated February 29, 1996, of the Circuit Court of Appeals of Puerto Rico, San Juan Regional Circuit; and of the order dated June 28, 1996, and entered July 1, 1996, of the Supreme Court of Puerto Rico sought to be reviewed in the present case are attached to this petition below:

IN THE DISTRICT COURT OF PUERTO RICO
SAN JUAN PART

RAFAEL BENET MELENDEZ, Plaintiff, v. PETER E. HALL, Defendant.	CIVIL NUM. 92-10289(501) RE: ACTION TO COLLECT DEBT

STATEMENT OF CASE

The present litigation involves an action to collect debt instituted by the plaintiff Atty. Rafael Benet Melendez against the also lawyer, Atty. Peter E. Hall, to recover the rent that the defendant Hall did not pay to the plaintiff Benet with respect to a rented office in a building property of the plaintiff. Previously, the plaintiff had obtained an eviction order against Hall with respect to the office occupied by the latter in an eviction action before this same court, Civil Num. 92-1170, said eviction having been carried out.

The plaintiff Benet requested and was granted an order of attachment, without having to post bond, to attach assets belonging to Hall. An automobile property of Hall was attached, and the latter challenged the order of attachment, claiming that it was unlawful, since no bond was posted. The court decided to settle this claim at the same time as the final disposition of the case.

The defendant Hall answered the complaint and also made a counterclaim requesting the rescission ex post facto of the rental contract, since he alleged that Benet failed to perform on said contract. The defendant-counterclaimant alleged that he did not have use of a reception area, that he had to share the reception area with other tenants who were not lawyers, that various belongings of his were stolen from the desk in the reception area, and that said incidents impeded his law practice.

After the completion of the discovery procedure and the convening of the pretrial conference, the hearing on the merits was held. The parties presented their proof with Atty. Hall appearing as his own lawyer during the hearing.

Having examined the testimony and documentary evidence submitted by the parties, this court states the following:

DETERMINATIONS OF FACT

1. The plaintiff, Atty. Rafael Benet, rented on May 15, 1990, to the defendant, Atty. Peter Hall, an office in the building "Lawyers' Center", located at number 613 of Ponce de Leon Avenue in Hato Rey, Puerto Rico.

2. The defendant Hall was informed of the offices through a newsletter published by the Bar Association.

3. In the building, there are tenants who are lawyers, some accountants, others offer fumigation services, secretarial services and other types of services.

4. The defendant Hall sent to Benet several letters in which he indicated that various belongings of his had disappeared from the reception area in front of his office and that he had differences with other tenants. During this time Hall did not employ a secretary.

5. The defendant Hall was permitted to move to another section of the building along with other tenants and for the first time since occupying an office in the building employed a secretary.

6. In accordance with the rental contract in effect between the parties, the rent was $280.00 per month for an indefinite period.

7. The defendant Peter Hall fell behind on his payments and failed to perform on the rental contract, the debt reaching the amount of $3,640.00 with interest at 10% per year.

8. By order of eviction in the case of *Benet v. Hall*, Num. 92-1170, District Court, San Juan Part, the eviction of the defendant was ordered and executed.

9. The plaintiff Benet instituted subsequently the present litigation against Hall attempting to recover on the debt contracted by Hall for failure to pay the rent before mentioned.

10. This court, by the intercession of the Honorable Judge Yvonne Feliciano Acevedo, issued an order of

attachment on August 3, 1992, and in said order the attachment was ordered of property real and personal, belonging to Hall, sufficient to cover the amount claimed, and the plaintiff was exempted from having to post bond.

11. The marshal attached an automobile property of Hall to cover the amount of $3,640.00 and the additional amount of $750.00 to cover costs and expenses of the litigation.

12. The defendant Hall requested by motion that the attachment be dissolved for the reason that no bond had been posted.

13. During the hearing on the merits, the plaintiff Benet testified with respect to the debt owed by Hall amounting to $3,640.00 resulting from rent not paid by Hall. In fact, the latter never denied the existence of the debt, testifying without proving that the rental contract had not been performed.

As the result of the foregoing, this court states the following:

CONCLUSIONS OF LAW

In this litigation a warrant of attachment was issued by which was ordered "the attachment of property real and personal belonging to the defendant, sufficient to cover the amount claimed of $3,640.00 and the amount of $750.00 to cover costs and expenses of the lawsuit, *including attorney's fees* [petitioner's emphasis added]", as claimed in the complaint, since the debt was liquid, due and owing. Likewise, the order of attachment indicated that the enforcement of the judgment was decreed "by

the attachment of assets real and personal of the defendant sufficient to cover the amount claimed". In the present case the marshal executed the attachment and seized sufficient assets, an automobile valued at approximately $4,500.00, to cover the debt owed by the defendant to the plaintiff. Such actions are correct, since the debt was liquid, due and owing, involving past due rent. See *Carlo v. Corte*, 58 D.P.R. 889; *Production Credit Association v. Rodriguez Pagan*, 81 D.P.R. 896 (1960).

Article 1044 of the Civil Code of Puerto Rico, 31 L.P.R.A. 2954 [sic], provides that "obligations arising from contracts have legal force between the contracting parties, and must be fulfilled in accordance with their stipulations". In the present case the proof established convincingly a debt of $3,640.00 owed by the defendant to the plaintiff for rent that the former failed to pay to the latter for use of the office that he occupied in the building property of the plaintiff.

On the other hand, the defendant did not demonstrate that the plaintiff breached the terms and conditions of the rental contract. The proof reflects all the contrary, since the defendant occupied, along with other tenants, an office in the building "Lawyers' Center" property of the plaintiff. The defendant shared the reception area with said tenants, some of whom were not lawyers, but who offered services of another type. The fact that the building is named "Lawyers' Center" does not lead to believe that the building was meant to be used exclusively by lawyers or professionals. The defendant Hall informed the plaintiff Benet in writing of the incidents in which Hall was involved with other tenants, in particular the alleged disappearance of various belongings from the desk that Hall used in the reception area. But the plaintiff

Benet could not be responsible for the incidents in which the defendant Hall found himself involved with other tenants. Moreover, the rental contract subscribed by the parties provided, in section (c) of article 3, that the tenant Hall would assume "responsibility for property or belongings in or around the space". Such provision of the contract bound Hall, and consequently, his claim against Benet is invalid. Art. 1044 of the Civil Code, supra.

As the result of the foregoing, the court decrees the following:

JUDGMENT

The relief claimed in the complaint is granted and the counterclaim is dismissed, ordering the defendant to pay to the plaintiff the amount of $3,640.00 as well as the costs, the expenses, *the amount of $1,000.00 for attorney's fees* [petitioner's emphasis added], and interest at 7% per year.

RECORD AND NOTIFY.

In San Juan, Puerto Rico, on 30 of March, 1994.

/s/ Carmen Dolores Ruiz Lopez
District Judge

[petitioner's translation]

COMMONWEALTH OF PUERTO RICO
IN THE CIRCUIT COURT OF APPEALS
REGIONAL CIRCUIT I – SAN JUAN

RAFAEL BENET MELENDEZ, Plaintiff-Appellee, v. PETER E. HALL, Defendant-Appellant.	)	Num. KLAN9500314 Appeal from Court of First Instance, Superior Part of San Juan KAC94-1485

PANEL COMPOSED OF ITS PRESIDENT, JUDGE NEGRON SOTO, AND JUDGES GONZALEZ ROMAN AND URGELL CUEBAS.

JUDGE GONZALEZ ROMAN DELIVERED THE OPINION OF THE COURT.

JUDGMENT

In San Juan, Puerto Rico, on 29 of February of 1996.

Atty. Peter Hall appeals from a judgment of the former District Court, San Juan Part, issued on March 30, 1994, and notified with copy to the record on July 13, 1994. By said judgment, the court appealed from found Atty. Hall liable to pay to Atty. Rafael Benet Melendez the amount of THREE THOUSAND SIX HUNDRED FORTY DOLLARS ($3,640.00) and ONE THOUSAND DOLLARS ($1,000.00) for attorney's fees as well as the costs of the litigation.

-I-

The facts that give rise to the present appeal date back to May 9, 1990. On that date Atty. Hall subscribed a rental contract with Atty. Benet, the plaintiff-appellee. Pursuant to said contract Atty. Benet rented to Atty. Hall an office located in the building "Lawyers' Center", situated at 613 of Ponce de Leon Avenue in Hato Rey, Puerto Rico. The contract provided that Atty. Hall would pay a rent of $280.00 per month.

On account of the failure of the tenant to pay the rent stipulated in the contract, Atty. Benet instituted an eviction action which in the end resulted in the expulsion of Atty. Hall from the building in question. Subsequently and in an independent action, Atty. Benet sought judicially to obtain the payment of the rent owed by Atty. Hall. Said action resulted in the judgment challenged in this appeal, which found Atty. Hall liable to pay $3,640.00 for past due rent and $1,000.00 for attorney's fees and costs of the litigation.

Not in agreement with this result, Atty. Hall makes three assignments of error in his appeal document. In the first place he states that the court appealed from committed error in its evaluation of the evidence. Second, he states that said court committed error in the interpretation and application of the law to the facts of the case. He submits, in support of the latter assignment of error, that the undisputed evidence demonstrated that the appellee breached his obligation under the rental contract. As a third assignment of error, he states that the trial court committed error by charging him with the payment of attorney's fees.

-II-

Having examined the pleadings of both parties as well as the record in the present case, with special attention to the summary of oral evidence, we are prepared to render judgment. The appealed judgment is confirmed, since the assigned errors were not committed.

With respect to the first two assignments of error, it appears most clearly from the evidence presented before the illustrious court of first instance that the parties subscribed a rental contract, that Atty. Benet, as lessor, performed his part of the contract and that Atty. Hall failed to pay the corresponding rent. None of the evidence presented by Atty. Hall contradicts the existence of past due rent.

We are guided in our appellate function by the principle that we will not intervene with the determinations made by a lower court in the absence of manifest error, prejudice, partiality or passion. *Riley v. Rodriguez,* 119 D.P.R. 762 (1987); *Perez Cruz v. Hosp. La Concepcion,* 115 D.P.R. 721, 728 (1984). The appellant has failed to demonstrate any of the grounds that would permit a higher court to intervene with the evaluation of the evidence made by a lower court. Since both of the first two assignments of error raise the question of the evaluation of the evidence that the District Court had before it, we decide that neither of these errors was committed.

With respect to the last assignment of error, which revolves around the charge for attorney's fees, we must state the following: the fundamental purpose of the award of attorney's fees to a prevailing party in a lawsuit, in accordance with Rule 44.1(d) of the Rules of Civil

Procedure, is to penalize or sanction a party which, for its obstinacy or frivolity, obligates another to incur the costs and suffer the inconveniences of an unnecessary litigation. The charge for attorney's fees is discretionary, but once determined the occurrence of obstinacy, it becomes mandatory. Rule 44.1(d) of the Rules of Civil Procedure, 32 L.P.R.A. App. III. For this reason we are forbidden to interfere with the sound and considered evaluation by the judge in her estimation of the procedural conduct of Atty. Hall. *Fernandez v. San Juan Cement Co., Inc.*, 118 D.P.R. 713 (1987); *Raoca Plumbing v. Trans World*, 114 D.P.R. 464 (1983).

Obstinacy implies an attitude that permeates the proceeding and affects the efficient function and administration of justice. It subjects the innocent litigant to the ordeal of a judicial proceeding and exposes him to unnecessary costs and the contracting of professional services such as the hiring of a lawyer. In some cases, this situation creates an exorbitant burden on the financial resources of the prevailing litigant.

The record of the case reflects that Atty. Hall was obstinate in the management of his own case. During the course of this litigation the court appealed from issued a warrant of attachment by which it caused the seizure of an automobile belonging to the appellant. Notwithstanding the latter, Atty. Hall, claiming that the attachment was unlawful, petitioned our Supreme Court to challenge the order of attachment. Said petition was denied by our highest court. As if this were not enough, the appellant defended himself unjustifiably in the action and without valid grounds in law. We consider that said procedural conduct constitutes an abuse of the proceedings and that

there exists no objective justification whatever for such, since it shows lack of regard for all principle of a just, speedy and economical remedy set forth in Rule 1 of Civil Procedure, 32 L.P.R.A. App. III, R. 1.

In accordance with the above expressed, the appealed judgment is confirmed.

RECORD AND NOTIFY.

So announced and orders the Court and so certifies the Clerk of the Court.

/s/ Maria de la C. Gonzalez
Clerk of the Court

[petitioner's translation]

IN THE SUPREME COURT OF PUERTO RICO

RAFAEL BENET MELENDEZ, Plaintiff-Respondent, v. PETER E. HALL, Defendant-Petitioner.	)	Num. CC-96-162 Certiorari

ORDER

San Juan, Puerto Rico, on 28 of June of 1996.

To the petition of certiorari, denied.

So decided the Court and certifies Mr. Clerk of the Court. The Chief Justice Mr. Andreu Garcia and Associate Justice Mr. Fuster Berlingeri took no part.

/s/ Francisco R. Agrait Llado
Clerk of the Court

[petitioner's translation]